
IN THE

**SUPREME COURT OF THE
UNITED STATES**

October Term, 1941

No. Original

**EX PARTE THE STATE OF TEXAS, ET AL.,
PETITIONERS**

**ADDITIONAL AUTHORITIES ON THE JURIS-
DICTION OF THE COURT TO GRANT
RELIEF TO PETITIONERS**

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Further research has brought to our attention other authorities bearing on the questions here presented, which petitioners believe may be of assistance to the Court. Petitioners therefore respectfully pray that these additional authorities be considered in connection with other authorities already cited.

1. *The presence of a non-federal question in the decision of the Texas Supreme Court.*

Both respondents and intervener lay much stress

on the fact that part of the Texas Supreme Court's opinion is taken up with its construction of Article 6059, Texas Revised Civil Statutes. From this they argue that since, as they contend, the Texas Supreme Court's decision depended on its construction of Article 6059, this Court has no jurisdiction to grant any relief. Petitioners have consistently taken the position that, while the Texas Supreme Court held the Court of Civil Appeals' construction of Article 6059 to be erroneous, the ultimate decision of the Texas Supreme Court that the judgment of the Court of Civil Appeals should be *reversed* was dependent solely on its construction of this Court's judgment. (See Petition, pp. 20, 28-29, and Petitioners' Reply, pp. 4-12)

Even, however, if it should be considered that the federal and non-federal grounds are both bases for the Texas Supreme Court's judgment, still this Court would not be deprived of jurisdiction. If the federal and non-federal grounds are interdependent or "interwoven," so that the court cannot say that the judgment rests squarely on an independent interpretation of the State law, this Court has jurisdiction. *State Tax Commission v. Van Cott*, 306 U. S. 511; *Abie State Bank v. Bryan*, 282 U. S. 765. In the latter case (282 U. S., at p. 773), Chief Justice Hughes quoted from the opinion in *Enterprise Irrigation District v. Farmers' Mutual Canal Co.*, 243 U. S. 157, 164, as follows:

"But where the non-federal ground is so interwoven with the other as not to be an independent

matter, or is not of sufficient breadth to sustain the judgment without any decision of the other, our jurisdiction is plain.”

A comparable case is this Court’s decision in *Minnesota v. National Tea Company*, 309 U. S. 551. In that case, this Court recognized the possibility that the decision of the Supreme Court of Minnesota might be based upon an independent non-federal ground, and that there was “considerable uncertainty as to the precise grounds for the decision” (See 309 U. S., at p. 555) Nevertheless, the Supreme Court of Minnesota had stated in its opinion that it was of the opinion that five decisions by this Court decided the validity of the statute involved, and that these cases “being the only cases to which our attention has been called *directly deciding the question presented*, we are of opinion that we should follow them and *that it is our duty to do so.*” (Quoted, 309 U. S., at p. 554)

This court, therefore, did not dismiss the petition for certiorari, but entered its order (similar to the one for which petitioners pray in this case) vacating the judgment of the Supreme Court of Minnesota and remanding the case to that court for further proceedings.

It was evidently urged in the *Minnesota* case, *supra*, that there was no certainty but what the Supreme Court of Minnesota on the remand might enter the same judgment as previously, upon a state ground, and that this Court should therefore refuse

jurisdiction. Substantially the same contention is made by Lone Star Gas Company (Intervener's Opposition, pp. 43-53) and respondents (Respondents' Return, p. 10) in this case. The language of this Court in reply to these contentions in the *Minnesota* case is therefore appropriate here: (309 U. S., at p. 557)

"It is important that this Court not indulge in needless dissertations on constitutional law. It is fundamental that state courts be left free and unfettered by us in interpreting their state constitutions. But it is equally important that ambiguous or obscure adjudications by state courts do not stand as barriers to a determination by this Court of the validity under the federal constitution of state action. Intelligent exercise of our appellate powers compels us to ask for the elimination of the obscurities and ambiguities from the opinions in such cases. Only then can we ascertain whether or not our jurisdiction to review should be invoked. *Only by that procedure can the responsibility for striking down or upholding state legislation be fairly placed. For no other course assures that important federal issues, such as have been argued here, will reach this Court for adjudication; that state courts will not be the final arbiters of important issues under the federal constitution; and that we will not encroach on the constitutional jurisdiction of the states. This is not a mere technical rule nor a rule for our convenience. It touches the division of authority between state courts and this Court and is of equal importance to each. Only by such explicitness can the highest courts of the states and this Court keep within the*

bounds of their respective jurisdictions." (Emphasis added.)

Petitioners respectfully submit that one of the principal reasons for the decision in the *Minnesota* case was the expressed desire of this Court, quoted above, that "responsibility for striking down or upholding state legislation be fairly placed." This is exactly the reason why petitioners urge that the relief here prayed for be granted. The Supreme Court of Texas has placed the responsibility for striking down the order of the Texas Railroad Commission upon this Court. This responsibility is not fairly placed upon this Court. The Supreme Court of Texas should be required to assume the responsibility of deciding whether it will reverse the Court of Civil Appeals' holding that the Lone Star Gas Company's evidence is insufficient to sustain a judgment finding the Railroad Commission's order invalid, instead of saying, as it has, that this question "*has been foreclosed by the United States Supreme Court and is not open for decision by this (Texas Supreme) Court, and was not open for decision by the Court of Civil Appeals.*" (Petition, p. 530; 153 S. F. (2d) at p. 695) (Our italics)

Where the federal question bears an important relation to the decision of the case, this Court has held that it will take jurisdiction and will vacate the judgment of the state court, even where the state court's opinion on its face purports to be a decision solely on a non-federal ground. In *Patterson v. Alabama*, 294 U. S. 600, the decision of the Supreme Court of Ala-

bama was entirely on the basis of procedure under the state law, but this Court took the view that the Alabama court's decision might have been different had it been correctly advised of this Court's opinion on the federal question involved. Recognizing that this Court in the exercise of its appellate jurisdiction has "power not only to correct error in the judgment under review but to make such disposition of the case as justice requires," this Court entered its order vacating the judgment of the Alabama court and remanding the case to that court for further proceedings. (294 U. S., at p. 607)

In the *Patterson* case, *supra*, the fact that the Supreme Court of Alabama might reach the same judgment under the state law upon the remand was not held to be sufficient to prevent the exercise by this Court of its jurisdiction. On this point, Chief Justice Hughes said: (294 U. S., at p. 607)

"... It is always hazardous to apply a judicial ruling, especially in a matter of procedure, to a serious situation which was not in contemplation when the ruling was made. At least the state court should have an opportunity to examine its powers in the light of the situation which has now developed. We should not foreclose that opportunity."

In the present case, petitioners submit that it is a sufficient ground for the exercise of this Court's jurisdiction that the Texas Supreme Court has erroneously held that this Court by its judgment con-

clusively determined the sufficiency of the evidence to sustain the finding that the rate order was confiscatory. The possibility that the Texas Supreme Court may reach the same conclusion upon an independent examination of this question under the state law should not prevent this Court from vacating the state Court's judgment and remanding the case for a consideration upon the proper basis, any more than a like possibility deterred this Court from similar action in the *Patterson case*. The Texas Supreme Court should be given an opportunity to decide the case on the merits (and not on a mistaken conception of this Court's prior judgment), and this Court "should not foreclose that opportunity."

2. *The form of relief prayed for.*

Lone Star Gas Company takes the position that the kind of writ here prayed for cannot be issued to a state court. (Intervener's Opposition, pp. 17-30). Its first contention is that since the writ of mandamus is specifically referred to in Section 234 of the Judicial Code (28 U. S. C., Sec. 342), such writ cannot be issued under the provisions of Section 262 of the Judicial Code. (28 U. S. C., Sec. 377) But it is obvious that Section 234 applies only to the issuance of mandamus to courts or officers appointed or holding office under the authority of the United States. It therefore does not "specifically provide" for the writ here prayed for, and does not therefore preclude the application of Section 262. The same contention as that here presented by intervener is referred to

in Evans, "Jurisdiction in Mandamus in United States Courts," 19 American Law Review, 505, 520 (1885) as follows:

"Section 14¹ gave the Supreme and Circuit and District Courts power to issue 'all other writs not specifically provided for by the statute, which may be necessary for the exercise of . . . jurisdiction, and agreeable to the principles and usages of law.' The argument that *mandamus* was 'specifically provided for' by Section 13,² though often advanced, found no favor. So it may be at once dismissed."

Intervener cites no case where the situation now before this Court has previously arisen. *In re Blake*, 175 U. S. 114, is a case where a second appeal was an available remedy and there was no reason to grant any extraordinary relief. See Moore, *Federal Practice*, (1938) v. 3, p. 3562, note 1, where it is recognized that this case decides against the issuance of mandamus "if another remedy is available." *Ableman v. Booth*, 21 Howard, 506, is cited by Lone Star Gas Company as being a case where this Court "declined to issue a writ of mandamus to a State court." (Intervener's Opposition, p. 25) A careful reading of the report of this case, however, fails to disclose that the question of mandamus was in any way involved, the decision being on two cases which were brought to this Court from the Supreme Court of Wisconsin on writs of error. There is nothing in

¹Now Section 262. Judicial Code.

²Now Section 234. Judicial Code.

the opinion to show that a writ of mandamus was even applied for, and there is certainly no discussion of the propriety of issuing such a writ to a State court.

In somewhat analogous cases, this Court has recognized that the purpose of Section 262 is to permit this Court to issue extraordinary writs "whenever there is imperative necessity therefor, as a means of correcting excesses of jurisdiction, of giving full force and effect to existing appellate authority, and of furthering justice in other kindred ways." See *United States v. Beatty*, 232 U. S. 463, 467. In exercising the authority granted by this act, this Court has not felt itself bound by the usual rules of appellate procedure, but has issued "independent" or "special" writs to achieve the result which justice required in the particular case. Compare *Barton v. Petit*, 7 Cranch, 288; *United States v. Adams*, 9 Wallace, 661; *In re Chetwood*, 165 U. S. 443; *McClellan v. Carland*, 217 U. S. 268; *Meeker v. Lehigh Valley Railway Co.*, 234 U. S. 328; *Spiller v. Atchison, T. & S. F. Ry.*, 253 U. S. 117. And the writ of mandamus in the nature of procedendo is the writ which is usually issued to lower Federal Courts where they have not correctly carried out the mandate and judgment of this Court. *In re Potts*, 166 U. S. 263; *Gaines v. Rugg*, 148 U. S. 228; *In re Washington & Georgetown Railroad Co.*, 140 U. S. 91; *Ex parte Dubuque & Pacific Railroad Co. v. Wallace*, 69. Compare *In re Sanford Fork & Tool Co.*, 160 U. S. 247.

The essential relief prayed for by petitioners in this case is that the judgment of the Texas Supreme Court be vacated and that the case be remanded to that court for such further proceedings as shall be proper under the correct construction of the former opinion and judgment of this Court. Whatever name may be applied to the relief thus sought, in substance and effect it is no more than this Court has granted in some cases, *Minnesota v. National Tea Co.*, 309 U. S. 551; *Patterson v. Alabama*, 294 U. S. 600; *State Tax Commission v. Van Cott*, 306 U. S. 511, and less than was granted in one case. *Stanley v. Schwalby*, 162 U. S. 255. The failure of the state court to enter a final judgment does not prevent the granting of relief by this Court where this Court's judgment and mandate have not been correctly followed. *Williams v. Bruffy*, 102 U. S. 248.³

This Court originally acquired jurisdiction when this case was brought here on appeal by Lone Star Gas Company. Having taken jurisdiction and having decided the case, this Court retains jurisdiction to see that its judgment is correctly carried out and that it is not misapplied in further proceedings in the same case. Section 262 specifically gives this Court authority to issue "all writs" which may be necessary for the exercise of the jurisdiction of this court. There is no statutory impediment to the granting of relief, such as formed the basis of the decision in *Toucey v.*

³In this case, the court said: (102 U. S. at p. 265.)

"Having jurisdiction of the case, we can now direct that such reversal be made and such judgment entered."

But because of the assertion of the Virginia court that under the Virginia statutes it could not enter the proper judgment, this Court itself entered the judgment.

New York Life Insurance Company, (No. 16, October Term, 1941) 62 S. Ct. 139. Whether the substance of the relief here prayed for neatly fits into previous conceptions of "mandamus" or of "procedendo" is largely a matter of nomenclature; the important fact is that the Congress has given this Court power to issue "all writs" necessary to the exercise of its jurisdiction, and that justice requires the granting of the relief here prayed for. This Court's power is as broad as the necessity for effectuating its judgments, and the name by which the relief may be designated is relatively unimportant.

CONCLUSION

The case is fully presented to this Court upon a record admitted by respondents to correctly state the proceedings which have taken place since this Court entered its judgment and issued its mandate. (Respondents' Return, pp. 2-3). It is respectfully submitted that, exercising its power "to make such disposition of the case as justice requires" (see *Patterson v. Alabama*, 294 U. S. 600, 607), this Court should grant petitioners the relief prayed for.

Respectfully submitted,

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